

Application No. 10/532,832
Reply to Office Action of June 25, 2008
and the Notice of Appeal filed December 29, 2008

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-6 and 8-17 are now pending in this application. Claims 12-17 are added. Support for new claims 12-17 is found at least in the specification at page 11, lines 24-32. No new matter is added.

The Rejection

In the outstanding Office Action, the Office maintained its rejections of claims 1-6 and 8-11 under 35 U.S.C. § 103(a) as being obvious over JP- 2001-072764 (hereinafter "JP-'764") in view of JP-2001-354542 (hereinafter "JP-'542").

The References

The JP-'764 reference discloses a crosslinked polyamino acid used in cosmetics. The reference exemplifies the use of polyaspartic acid as the backbone of the polyamino acid, but lists polyglutamic acid and polylysine as alternatives. Regarding particle size, the JP-'764 reference teaches as follows:

When it is used as cosmetics, in order to obtain slipping nature, stretch, and the feeling of use that does not give a feeling of rough deposit, usually 10 nm- 500 micrometers are desirable, 100 nm – 200 micrometers are more desirable, and 1 micrometer – 100 micrometers are still more desirable.

The JP-'764 reference does not disclose whether the given particle size measurements are average particle sizes or some other measurement of particle size.

The JP-'542 reference discloses a moisturizer that comprises poly- γ -glutamic acid bridges formed by irradiation. The JP-'542 reference does not teach or suggest anything regarding particle size.

The Claims

Claim 1 is an independent claim from which claims 2-5 depend. Claim 1 is directed to a cosmetic material comprising a crosslinked product of poly- γ -glutamic acid and/or a crosslinked product of a poly- γ -glutamic acid salt. The crosslinked product has a particle size of 0.1 to 100 μm with an average particle size of 1 to 50 μm . Claim 6, from which claims 8-11 depend, is directed to a cosmetic material that includes an oiliness agent and a crosslinked product as an oil dispersion modifier, with the crosslinked product having a particle size of 0.1 to 100 μm with an average particle size of 1 to 50 μm .

The References Do Not Teach or Suggest All of the Elements of the Claimed Invention

A claimed invention can only be found obvious if there is "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)). Moreover, every word in a claim must be considered in determining the question of patentability against the prior art. *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970). With this in mind, the asserted combination of the JP-'764 reference and the JP-'542 reference cannot render the claimed invention obvious. The combined references do not teach or suggest all of the elements. Specifically, neither of the references teach or suggest the desirability of a cosmetic composition including particles falling within **two different parameters**. The claims are directed to a crosslinked product having **both** an average particle size of 1 to 50 μm **and** a distribution of particle sizes of 0.1 to 100 μm . The JP-'542 reference is completely silent about particle size, and the JP-'764 reference only teaches a single parameter describing particle size, without even defining what that parameter is. Accordingly, the recited references cannot render the claimed invention obvious.

The References Do Not Enable the Claimed Invention

In addition to failing to disclose all of the claimed elements, the JP-'764 reference combined with the JP-'542 reference fails to enable the crosslinked poly- γ -glutamic acid in the presently claimed invention. In order to render a claimed invention obvious, the prior art must enable one skilled in the art to make and use the claimed invention. *Rockwell Int'l Corp. v. United States*, 147 F.3d 1358, 1365 (Fed. Cir. 1998). The Applicant has provided ample evidence, in the 37 C.F.R. §1.132 Declaration of Hajime Ito, filed on November 16, 2006, that the JP-'764 reference does not enable the crosslinked product of poly- γ -glutamic acid or a crosslinked product of a poly- γ -glutamic acid salt sufficiently to render the present invention obvious. In that Declaration, the Declarant described his attempt to make crosslinked products using aspartic acid and glutamic acid raw materials with the method in the JP-'764 reference. The Declarant determined that the method of the JP-'764 reference resulted in crosslinked poly-aspartic acid formed from the aspartic acid raw material. However, the Declarant determined that the method of the JP-'764 reference did not result in crosslinked poly- γ -glutamic acid formed from the glutamic acid raw material.

Given the complete silence of the JP-'542 with regard to any particle size parameters, and given the failure of the JP-'764 to enable any crosslinked poly- γ -glutamic acid product, the combination does not enable the claimed invention, and cannot render the claimed invention obvious.

The Claimed Invention Shows Unexpectedly Superior Properties

A greater than expected result is an evidentiary factor pertinent to the legal conclusion of obviousness of the claims at issue. *In re Corkill*, 711 F.2d 1496, 226 USPQ 1005 (Fed. Cir. 1985). To that end, the Applicant has determined that the crosslinked poly- γ -glutamic

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acid of the present invention is surprisingly effective as a humectant, as compared to a crosslinked polyaspartic acid product, similar to the JP-'764 product.

Applicant herewith submits the 37 C.F.R. §1.132 Declaration of Hideki Nakata. In the Declaration, the Declarant describes testing the water absorption ability of the claimed crosslinked poly- γ -glutamic acid product. The results are compared to results in JP09-202825 (hereinafter "JP-'825") (a copy of which is attached as Exhibit A). JP-'825 discloses a crosslinked polyaspartic acid product formed by irradiation with γ -radiation, and discloses the evaluation of the water absorption ability of the polyaspartic acid product using a tea bag method in Examples 1 and 8. Declarant's testing shows that the present crosslinked polyglutamic acid product has a surprisingly good water absorption ability as compared to the crosslinked polyaspartic acid product in JP-'825. The results in JP-'825 for the polyaspartic acid product, and the results from Applicant's testing of its crosslinked poly- γ -glutamic acid product, are shown below in Table A:

Electron Beam Irradiation(kGy)	Absorption Ability (Times)	
	poly- γ -glutamic acid	aspartic acid
140	347.17	--
120	563.36	--
100	876.22	26
80	2658.79	460

As noted, cross-linked poly- γ -glutamic acid of the present invention is surprisingly effective as a humectant. These surprising results show the nonobviousness of the claimed cosmetic materials.

Conclusion

The recited combination of references does not teach all of the elements of the claimed invention. Moreover, the recited combination of references do not enable the claimed invention. Finally, the claimed invention shows surprisingly good results as

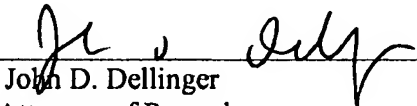
Application No. 10/532,832
Reply to Office Action of June 25, 2008
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compared to the prior art product. Accordingly, Applicant respectfully requests withdrawal of the rejections of the present claims.

In light of the above discussion, and following the additional submission of supplemental evidence, the present application is believed to be in condition for allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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